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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.32611 of 2019

(Through Video Conferencing)

Mahesh Desai

... Petitioner

Vs.

The State of Tamil Nadu,
Rep. by its Director - Principal Chief
Conservator of Forest,
Panagal Maligai,
Saidapet, Chennai - 15.

... Respondent

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to impugned order passed by the respondent in Proc.No.AB1/12264/2017 dated 16.08.2017 and to quash the same and consequently direct the respondent to fix the seniority and give promotion to the petitioner for the post of Forester.

For Petitioner : M/s.Giriya Velmurugan

For Respondent : Mr.LSM.Hasan Fizal
Government Advocate

O R D E R

Both the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondent submit that the issue is squarely covered by the decision of this Court in K.Anbalagan and 30 Others Vs. Government of Tamil Nadu, rep. by its Secretary of Environment and Forest Department, dated 22.11.2016, in W.P.No.40881 of 2016, wherein, in Paragraph Nos.5 and 6, this Court held as under:-

5.As rightly contended by the learned counsel



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for the petitioners, a Government employee cannot be denied promotion on the ground that he did not possess the service qualification, which is not at his hands. The issue is squarely covered by the decision of this Court made in W.P.No.26784 of 2013 dated 03.12.2013 (S.Premathi and 3 others vs. The Additional Chief Secretary/Commissioner of Revenue and 2 others), wherein, this Court, relying on two other decisions of this Court, has allowed the writ petition. Paragraph Nos.5 and 6 of the said order read as follows:-

"5.The learned counsel for the petitioners heavily relied on the decision dated 12.10.2011 in S.Sasisivanandam v. District Collector, Thoothukudi District, Thoothukudi and another reported in (2012 (1) MLJ 634) wherein, in paragraph No.16, it has been held as follows:-

"16.The learned counsel for the petitioner has rightly contended that the judgment of this Court dated 04.09.2007 in W.P.Nos.47872 and 47885 of 2006 and 7791 of 2007 is squarely application to this case. The relevant portion of the above judgment reads as follows:-

"8.Under these circumstances, the petitioners cannot be denied the benefit of inclusion in the panel, on the ground that they did not possess the service qualification. After all, the service qualification cannot be equated to the qualification of a pass in the departmental test. While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post, is not within the hands of the individual. Therefore, the respondents ought to have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. Since the respondents have failed to do so, the petitioners were not at fault and on that ground, they should not have been omitted to be included in the panel."

6.In an identical case, in W.P.No.15180 of 2013 on 14.06.2013, this Court has passed the



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following order:-

"13. Accordingly, the writ petition is allowed. A direction is issued to the respondent No.2 and 3 to promote the petitioners as Assistant from the date of his immediate juniors were promoted for the year 2012. The respondent No.2 and 3 are also directed to complete the exercise within a period of six weeks from the date of receipt of copy of this order."

6.It is the case of the petitioners that they have not been deputed to Vaigai Dam Training for a long time. If the department fails to post them at a particular place for the training, the employee could not be blamed for the same, as rightly observed by this Court in the aforesaid decision."

2. The said decision has been affirmed by the Division Bench of this Court recently on 07.07.2021 in W.A.No.2682 of 2019 by a detailed order. Relevant portion of the said order in Paragraphs Nos..6 to 10 reads as under:-

6. The learned State Government Counsel appearing for the appellants contended that the learned Single Judge had not considered Rule 5 of the Tamil Nadu Forest Subordinate Service Rules in regard to the other qualification in respect of promotion to the post of Forester. The relevant rule is extracted hereunder:

5. OTHER QUALIFICATION

No person shall be eligible for appointment to the class, category and grade specified in column (1) and by the method specified in column (2) of the table below unless he possess the qualifications specified in the corresponding entry in column (3) thereof.

Class Category	Method	Qualifications
1	2	3



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Class Category	Method	Qualifications
Class-1 2. Forester	iv) promotion of Forest Guard	(b) Must have successfully completed a course of training in a Tamil Nadu Forestry College, Vaigai Dam if he had not already undergone such training.

7. No doubt, the above said Rule 5 stipulates other qualification such as Vaigai Dam Training as mandatory. However, unless the appellants depute the respondents for such training at the appropriate time, they could not be expected to complete the same. The respondents, who are the employees, may not compel the appellants to depute them for the training. The alleged non-completion of the training by the writ petitioners/respondents herein within the stipulated period is not their fault and the same cannot be put against them, dis-entitling them from getting their promotion. It is also pointed out that the juniors to the respondents have marched ahead of them by getting a promotion. Therefore, the contention of the learned State Government Counsel that a person can be promoted based on merit and ability apart from seniority and the departmental promotion committee alone is competent to recommend the person fit for promotion cannot be accepted.

8. The next contention of the learned State Government Counsel is that the juniors to the respondents were promoted only pursuant to the Court order, also is not acceptable. Therefore, the respondents cannot be prejudiced and deprived of their lawful promotion on the ground that they have not completed the training in the Tamil Nadu Forestry College, Vaigai Dam as prescribed under Rule 5 of the Tamil Nadu Forest Subordinate Service Rules.

9. In view of the above discussion, we are of the view that the learned Single Judge has rightly directed the appellants to include the names of the writ petitioners/respondents in the panel for the year 2011-2012 and promote them as Foresters from



the date on which their juniors were promoted on notional basis. There is no infirmity or illegality in the above order and the same is confirmed.

10. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

3. Incidentally, today, a similar order was passed in W.P.No.12840 of 2017 following the above decisions of this Court.

4. In view of the above, this Writ Petition stands allowed. No cost.

Sd/-
Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

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To

The Director cum Principal Chief Conservator of Forest,
The State of Tamil Nadu,
Panagal Maligai,
Saidapet, Chennai - 15.

+lcc to Mr.M.Velmurugan, Advocate, S.R.No.38242
+lcc to the Government Pleader, S.R.No.37677

W.P.No.32611 of 2019

RSV(CO)
CT(03/09/2021)